

§ 780.5

(4) Determinations under Title XII of the Food Security Act of 1985, as amended, made by NRCS.

(c) Only a participant directly affected by a decision may seek administrative review under § 780.5(c).

§ 780.5 Decisions that are not appealable.

(a) Decisions that are not appealable under this part shall include the following:

(1) Any general program provision or program policy or any statutory or regulatory requirement that is applicable to similarly situated participants;

(2) Mathematical formulas established under a statute or program regulation and decisions based solely on the application of those formulas;

(3) Decisions made pursuant to statutory provisions that expressly make agency decisions final or their implementing regulations;

(4) Decisions on equitable relief made by a State Executive Director or State Conservationist pursuant to Section 1613 of the Farm Security and Rural Investment Act of 2002, Pub. L. 107-171;

(5) Decisions of other Federal or State agencies;

(6) Requirements and conditions designated by law to be developed by agencies other than FSA.

(7) Disapprovals or denials because of a lack of funding.

(8) Decisions made by the Administrator or a Deputy Administrator.

(b) A participant directly affected by an adverse decision that is determined not to be subject to appeal under this part may request an appealability review of the determination by the State Executive Director of the State from which the underlying decision arose in accordance with § 780.15.

(c) Decisions that FSA renders under this part may be reviewed by NAD under part 11 of this title to the extent otherwise allowed by NAD under its rules and procedures. An appealability determination of the State Executive Director in an administrative review is considered by FSA to be a new decision.

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§ 780.6 Appeal procedures available when a decision is appealable.

(a) For covered programs administered by FSA for CCC, the following procedures are available:

(1) Appeal to the county committee of decisions of county committee subordinates;

(2) Reconsideration by the county committee;

(3) Appeal to the State committee;

(4) Reconsideration by the State committee;

(5) Appeal to NAD;

(6) Mediation under guidelines specified in § 780.9.

(b) For decisions in agricultural credit programs administered by FSA, the following procedures are available:

(1) Reconsideration under § 780.7;

(2) Mediation under § 780.9;

(3) Appeal to NAD.

(c) For programs and regulatory requirements under Title XII of the Food Security Act of 1985, as amended, to the extent not covered by paragraph (a) of this section, the following procedures are available:

(1) Appeal to the county committee;

(2) Appeal to the State committee;

(3) Mediation under § 780.9;

(4) Appeal to NAD.

§ 780.7 Reconsideration.

(a) A request for reconsideration must be submitted in writing by a participant or by a participant's authorized representative and addressed to the FSA decision maker as will be instructed in the adverse decision notification.

(b) A participant's right to request reconsideration is waived if, before requesting reconsideration, a participant:

(1) Has requested and begun mediation of the adverse decision;

(2) Has appealed the adverse decision to a higher reviewing authority in FSA; or

(3) Has appealed to NAD.

(c) Provided a participant has not waived the right to request reconsideration, FSA will consider a request for reconsideration of an adverse decision under these rules except when a request concerns a determination of NRCS appealable under the procedures